IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 151 OF 2004

Balasaheb Daji Kashid. ... Appellant.
Versus.
Babu Krishna Kashid and others ... Respondents.

Shri Machindra Patil for the Appellant.

Shri S.G.Kudle for the Respondents Nos.1 & 3.

CORAM : ABHAY S. OKA, J.

DATED : 2nd March, 2005.

P.C.:

1. Heard the learned Counsel for the parties. The trial Court has passed a decree declaring that the sale deed executed by the Respondent no.1 on 21st October 1985 is totally illegal, null and void as on the date of execution of the said sale deed the Respondent No.1 was of unsound mind.

2. The learned Counsel for the Appellant submitted that there was no compliance with the provisions of Rule 15 of Order XXXII of the Code of Civil Procedure, 1908, as no enquiry was held by the trial Court at the time of institution of the suit. He submitted that there was no evidence on record to show that the Respondent No.1 was of unsound mind. He submitted that there was evidence on record to show that the Respondent No.1 was of sound mind.

3. I have considered the submissions of the learned Counsel for the Appellant. The Appellate Court has considered the evidence of the Psychiatrist Dr.Ratnakar who examined the Respondent No.1 on 27th August 1985 and another Medical Practitioner Dr.Pramod who examined the Respondent No.1 on 14th May 1986. After considering the oral evidence of the said two Medical Practitioners and the medical certificates, a finding of fact has been recorded that on the date of execution of the sale deed i.e. on 21st October 1985, the Respondent No.1 was not in a sound state of mind. The said evidence is based on the appreciation of evidence of the experts and therefore, no interference is called for in this Second Appeal under section 100 of the said Code.

4. As far as the issue of payment of consideration is concerned, again there is a finding of fact recorded that the Appellant has failed to prove payment of consideration. So far as the third submission about non compliance with the provisions of Rule 15 of Order XXXII is concerned, the Appellate Court has considered the same and came to the conclusion that there is a substantial compliance made with the procedural requirements of Order XXXII of the Code. The procedural requirement of Order XXXII of the said Code cannot be held to be mandatory. It is also pertinent to note that the said contention is not raised by the Appellant during the pendency of the suit though the said suit was

pending for about 3 years.

5. No substantial question of law arise. The Second Appeal is dismissed with no order as to costs.

Judge.